

SECOND REGULAR SESSION

# SENATE BILL NO. 1113

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time January 21, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4066S.011

## AN ACT

To repeal sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, and 486.395, RSMo, and to enact in lieu thereof nineteen new sections relating to notaries public, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, and 486.395, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 486.225, 486.235, 486.240, 486.260, 486.265, 486.280, 486.285, 486.295, 486.300, 486.310, 486.315, 486.330, 486.335, 486.340, 486.345, 486.350, 486.385, 486.395, and 486.396, to read as follows:

486.225. 1. Upon a form prepared by the secretary of state, each applicant for appointment and commission as a notary public shall swear, under penalty of perjury, that the answers to all questions on the application are true and complete to the best of the applicant's knowledge and that the applicant is qualified to be appointed and commissioned as a notary public. [The Social Security number of the applicant shall be recorded on the application.] The completed application form shall be filed with the secretary of state.

2. [With the person's application, each applicant for appointment and commission as a notary public shall submit to the secretary of state endorsements from two registered voters of this state in substantially the following form:

I, ..... (name of endorser), a registered voter of this state and ..... County, believe to the best of my knowledge, the applicant is a person of good moral character and integrity and capable of performing notarial acts.

.....

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(Endorser's signature and residence address)

3.] With the person's application, each applicant for appointment and commission as a notary public shall submit to the secretary of state, payable to the director of revenue, a commission fee of fifteen dollars.

[4.] **3.** Each applicant for appointment and commission as a notary public shall state in the application whether or not the applicant has ever been convicted of or pled guilty or nolo contendere to any felony [involving fraud, misrepresentation or theft], **or to any misdemeanor incompatible with the duties of a notary public** and if so, shall attach a list of such convictions or pleas of guilt or nolo contendere.

**4. Each applicant for a renewal appointment and commission as a notary public may apply for such renewal appointment in a manner prescribed by the secretary of state.**

**5. The secretary of state may prohibit, for a period not less than thirty days and not more than one year, a new applicant or renewal from reapplying for an appointment and commission as a notary public following the rejection of such applicant's application by the secretary of state.**

**6. Prior to submitting an application to the secretary of state, each new applicant or renewal for appointment and commission as a notary public shall read the Missouri Notary Public Handbook and complete a computer-based notary training or other notary training in a manner prescribed by the secretary of state. Each new applicant shall attest to reading such handbook and receiving such training pursuant to this subsection at the time of submitting the application for appointment and commission as a notary public.**

486.235. 1. During his **or her** term of office each notary public shall maintain a surety bond in the sum of ten thousand dollars with, as surety thereon, a company qualified to write surety bonds in this state. The bond shall be conditioned upon the faithful performance of all notarial acts in accordance with this chapter. Each notary public shall notify the secretary of state of changes on or riders to the bond.

2. Before receiving his **or her** commission, each applicant shall submit to the county clerk of the county within and for which he **or she** is to be commissioned, an executed bond commencing at least [thirty] **ninety** days after the date he **or she** submitted [his] **the** application to the secretary of state with a term of four years, **which shall consist of the dates specified on the applicant's commission.**

3. Before receiving his **or her** commission, each applicant shall take the following oath in the presence of the county clerk:

I, ..... (name of applicant), solemnly swear, under the penalty of perjury, that I have carefully read the notary law of this state, and if appointed and commissioned as a notary public, I will uphold the Constitution of the United States and of this state and will

faithfully perform to the best of my ability all notarial acts in conformance with the law.

.....(signature of applicant)

Subscribed and sworn to before me this ..... day of ....., [19] 20... .

.....(signature of county clerk)

4. Before receiving his **or her** commission, each applicant shall submit to the county clerk a handwritten specimen of [his] **the applicant's** official signature which contains his **or her** surname and at least the initial of [his] **the applicant's** first name.

5. Immediately after receiving the bond and official signature and witnessing the oath, the county clerk shall award to the applicant his **or her** commission as a notary public.

486.240. If the person for whom a commission is issued fails to appear and qualify within ninety days after the commission is issued, the county clerk shall note the failure on the commission and return it **within thirty days of such failure** to the secretary of state. The secretary of state shall immediately cancel and annul the commission. **The secretary of state may prohibit, for a period not less than thirty days and not more than one year, from reapplying for an appointment and commission as a notary public following the failure to appear and qualify within ninety days after the commission is issued.**

486.260. Each notary public shall provide and keep a permanently bound journal of his **or her** notarial acts containing numbered pages. **Each notary public shall record in such journal the following: the month, day, and year of notarization; the type of notarization such as acknowledgment or jurat; the type of document; the name and address of the signer; the identification used by the signer; the notary fee; and the signature of the signer.**

486.265. Every notary shall keep a true and perfect record of his **or her** official acts **in a permanently bound journal**, except those connected with judicial proceedings, and [those for whose public record the law provides, and] if required, shall give a certified copy of any record in his **or her** office, upon the payment of the fees therefor. Every notary shall make and keep an exact minute, in a [book] **permanently bound journal** kept by him **or her** for that purpose, of each of his **or her** official acts, except as herein provided. **The journal is the exclusive property of the notary.**

486.280. On every notary certificate, a notary public shall indicate clearly and legibly, **in print not smaller than eight- point type** and by means of rubber stamp, typewriting or printing, so that it is capable of photographic reproduction:

- (1) His **or her** name exactly as it appears on [his] **the** commission;
- (2) The words "Notary Public", "State of Missouri", and "My commission expires .. (commission expiration date)";
- (3) The name of the county within which he **or she** is commissioned; **and**
- (4) **A commission number, provided that the notary public has been issued**

**a commission number by the secretary of state. Effective August 28, 2004, the secretary of state shall issue a commission number for all new and renewal notary appointments.**

486.285. 1. Each notary public shall provide, keep, and use a seal which is either an engraved embosser seal or a black inked rubber stamp seal to be used on the document being notarized. The seal shall contain the notary's name exactly as indicated on the commission and the words "Notary Seal", "Notary Public", and "State of Missouri" **and, after August 28, 2004, the commission number assigned by the secretary of state, all of which shall be in print not smaller than eight-point type.**

2. The indentations made by the seal embosser or printed by the black inked rubber stamp seal shall not be applied on the notarial certificate or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing on the certificate or document.

3. Every notary shall keep an official notarial seal that is the exclusive property of the notary and the seal may not be used by any other person or surrendered to an employer upon termination of employment.

486.295. Any notary public who changes the address of his **or her** residence in the county within and for which he **or she** is commissioned shall forthwith mail or deliver **within thirty days of such change** a notice of the fact to the secretary of state including his **or her** old address and [his] current address. [The secretary of state shall notify the county clerk of the change of address.] The notary's commission shall remain in effect until its expiration date, unless sooner revoked.

486.300. Any notary public who lawfully changes his **or her** name shall forthwith request **within thirty days of such change** an amended commission from the secretary of state and shall send [him] **to the secretary of state** five dollars, his **or her** current commission, and a notice of change form provided by the secretary of state, which shall include his **or her** new name and contain a specimen of his **or her** official signature. The secretary of state shall issue an amended commission to [him] **the notary public** in his **or her** new name and shall notify the clerk of the county within and for which the notary is commissioned. After requesting an amended commission, the notary may continue to perform notarial acts in his **or her** former name, until he **or she** receives the amended commission.

486.310. If any notary public no longer desires to be a notary public, he **or she** shall forthwith mail or deliver to the secretary of state a letter of resignation, and his **or her** commission shall thereupon cease to be in effect. **If a notary public resigns following the receipt of a complaint by the secretary of state regarding the notary public's conduct, the secretary of state may deny any future applications by such person for appointment and commission as a notary public.**

486.315. If a notary public has ceased to have a residence address in the county

within and for which he **or she** is commissioned, [his] **the** commission shall thereupon cease to be in effect, unless the secretary of state issues an amended commission. When a notary public, who has established a residence address in a county of the state other than the county in which he **or she** was first commissioned, requests an amended commission **within thirty days of changing the notary's county of residence**, delivers his **or her** current commission, notice of change form, and five dollars to the secretary of state, the secretary of state shall issue an amended commission to [him] **the notary public**, for the county in which his **or her** new residence is located and shall notify the county clerk of the county where the notary's new address is located. After requesting an amended commission **within thirty days of changing the notary's county of residence**, the notary may continue to perform notarial acts with certificates showing the county within and for which he **or she** is commissioned, until [he] **the notary** receives his **or her** amended commission.

486.330. Except as otherwise provided in section 442.210, RSMo, certificates of acknowledgment shall be in **print not smaller than eight-point type and in** substantially the following form:

(1) By an Individual.

State of ....., County (and/or City) of ....., On this .... day of .... in the year .... before me, .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of individual), known to me to be the person who executed the within .... (type of document), and acknowledged to me that .... (he) executed the same for the purposes therein stated.

(2) By a Partner.

State of ....., County (and/or City) of ....., On this .... day of .... in the year .... before me, .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of partner) of .... (name of partnership), known to me to be the person who executed the within ..... (type of document) in behalf of said partnership and acknowledged to me that he **or she** executed the same for the purposes therein stated.

..... (official signature and official seal of notary.)

(3) By a Corporate Officer.

State of ....., County (and/or City) of ....., On this .... day of .... in the year .... before me, .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of officer), ..... (title of person, president, vice president, etc.), .... (name of corporation), known to me to be the person who executed the within ..... (type of document) in behalf of said corporation and acknowledged to me that he **or she** executed the same for the purposes therein stated. .... (official signature and official seal of notary.)

(4) By an Attorney in Fact for Principal or Surety.

State of ....., County (and/or City) of ....., On this .... day of ....., in the year .... before me, .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of attorney in fact), Attorney in Fact for .... (name of principal or surety), known to me to be

the person who executed the within ..... (type of document) in behalf of said principal (or surety), and acknowledged to me that he **or she** executed the same for the purposes therein stated.

..... (official signature and official seal of notary.)

(5) By a Public Officer, Deputy, Trustee, Administrator, Guardian or Executor.

State of ...., County (and/or City) of .... On this .... day of ...., in the year ...., before me .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of person), ...., (person's official title) known to me to be the person who executed the within .... (type of document) in behalf of ..... (public corporation, agency, political subdivision or estate) and acknowledged to me that he **or she** executed the same for the purposes therein stated.

..... (official signature and official seal of notary.)

(6) By a United States Citizen Who is Outside of the United States. (description or location of place where acknowledgment is taken)

On this .... day of ...., in the year ...., before me ..... (name and title of person acting as a notary and refer to law or authority granting power to act as a notary), personally appeared ..... (name of citizen) known to me to be the person who executed the within ..... (type of document) and acknowledged to me that ..... (he) executed the same for the purposes therein stated.

..... (official signature and official seal of person acting as a notary and refer to law or authority granting power to act as a notary).

(7) By An Individual Who Cannot Write His **or Her** Name.

State of ...., County (and/or City) of .... On this .... day of .... in the year ...., before me ..... (name of notary), a Notary Public in and for said state, personally appeared .... (name of individual), known to me to be the person who, being unable to write his **or her** name, made his **or her** mark in my presence. I signed his **or her** name at his **or her** request and in [his] **that person's** presence on the within .... (type of document) and he **or she** acknowledged to me that he **or she** made his **or her** mark on the same for the purposes therein stated.

..... (official signature and official seal of notary.)

(8) By a Manager or Member.

State of ...., County (and/or City) of .... On this .... day of .... in the year .... before me, .... (name of notary), a Notary Public in and for said state, personally appeared ..... (name of manager or member) of .... (name of limited liability company), known to me to be the person who executed the within ..... (type of document) in behalf of said limited liability company and acknowledged to me that he **or she** executed the same for the purposes therein stated.

..... (official signature and official seal of notary.)

486.335. Affirmations shall be in **type not smaller than eight-point and in** substantially the following form:

(1) If the affirmation to be administered by the notary public is in writing and the person who took the affirmation has signed his **or her** name thereto, the notary public shall write or print under the text of the affirmation the following:

"Subscribed and affirmed before me this ..... day of ....., [19] **20**...."

..... (official signature and official seal of notary.)

(2) If the affirmation to be administered by the notary public is not in writing, the notary public shall address the affirmant substantially as follows:

"You do solemnly affirm, under the penalty of perjury, that the testimony you shall give in the matter in issue, pending between ..... and ....., shall be the truth, the whole truth, and nothing but the truth."

486.340. 1. As used in this section, the words "executing witness" means an individual who acts in the place of a notary.

2. An executing witness may not be related by blood or marriage or have a disqualifying interest as defined in section 486.255.

3. The affidavit of executing witness for acknowledgment by an individual who does not appear before a notary shall be in **type not smaller than eight-point and in** substantially the following form:

I, ..... (name of executing witness), do solemnly affirm under the penalty of perjury, that .... (name of person who does not appear before a notary), personally known to me, has executed the within ..... (type of document) in my presence, and has acknowledged to me that ..... (he/**she**) executed the same for the purposes therein stated and requested that I sign my name on the within document as an executing witness.

..... (signature of executing witness)

Subscribed and affirmed before me this .... day of ....., [19] **20**....

..... (official signature and official seal of notary.)

486.345. 1. A notary public may certify a facsimile of a document if he **or she** receives a signed written request stating that a certified copy or facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.

2. Each notary public shall retain a facsimile of each document he **or she** has certified as a facsimile of another document, together with other papers or copies relating to his **or her** notarial acts.

3. The certification of a facsimile shall be in **type not smaller than eight-point and in** substantially the following form:

State of ..... County (and/or City) of ..... I, ..... (name of notary), a Notary Public in and for said state, do certify that on ..... (date) I carefully compared the attached facsimile of ..... (type of document) and the facsimile I now hold in my possession. They

are complete, full, true and exact facsimiles of the document they purport to reproduce.

..... (official signature and official seal of notary.)

486.350. 1. The maximum fee in this state for notarization of each signature and the proper recording thereof in the journal of notarial acts is two dollars for each signature notarized.

2. The maximum fee in this state for certification of a facsimile of a document, and the proper recordation thereof in the journal of notarial acts is two dollars for each 8 ½ x 11 inch page retained in the notary's file.

3. The maximum fee in this state is one dollar for any other notarial act performed.

4. No notary shall charge or collect a fee for notarizing the signature on any absentee ballot or absentee voter registration.

5. A notary public who charges more than the maximum fee specified or who charges or collects a fee for notarizing the signature on any absentee ballot or absentee voter registration is guilty of official misconduct.

**6. A notary public may charge a travel fee, not to exceed the approved federal mileage rate, when traveling to perform a notarial act, provided that:**

**(1) The notary explains to the person requesting the notarial act that the travel fee is separate from the notarial fee and is not specified or mandated by law; and**

**(2) The notary and the person requesting the notarial act agree upon his or her travel fee in advance.**

486.385. 1. The secretary of state may **reject an application or** revoke the commission of any notary public who **prior to being commissioned or** during the current term of appointment:

(1) Submits an application for commission and appointment as a notary public which contains substantial and material misstatement of facts;

(2) Is convicted of any felony or official misconduct under this chapter;

(3) Fails to exercise the powers or perform the duties of a notary public in accordance with this chapter, **or fails otherwise to comply with the provisions of this chapter;**

(4) Is adjudged liable or agrees in a settlement to pay damages in any suit grounded in fraud, misrepresentation, impersonation, or violation of the state regulatory laws of this state, if his **or her** liability is not solely by virtue of his **or her** agency or employment relationship with another who engaged in the act for which the suit was brought;

(5) Uses false or misleading advertising wherein he **or she** represents or implies, by virtue of [his] **the** title of notary public, that he **or she** has qualifications, powers, duties, rights, or privileges that he **or she** does not possess by law;

(6) Engages in the unauthorized practice of law;

(7) Ceases to be a citizen of the United States;



(8) Ceases to be a registered voter of the county within and for which he **or she** is commissioned;

(9) Ceases to have a residence address in the county within and for which he **or she** is commissioned, unless he **or she** has been issued an amended commission;

(10) Becomes incapable of reading or writing the English language;

(11) Fails to maintain the surety bond required by section 486.235.

2. A notary's commission may be revoked under the provisions of this section [only] if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal. **The secretary of state shall have further power and authority as is reasonably necessary to enable the secretary of state to administer this chapter efficiently and to perform the duties therein imposed upon the secretary of state, including immediate suspension of a notary upon written notice sent by certified mail if the situation is deemed to have a serious unlawful effect on the general public; provided, that the notary public shall be entitled to hearing and adjudication as soon thereafter as is practicable.**

486.395. Upon the receipt of a written request, the notarized document and a fee of ten dollars payable to the director of revenue, the secretary of state shall provide a certificate of authority in **type not smaller than eight-point and in** substantially the following form:

I, ..... (appointing state official, or local or district office designated by appointing state official, name and title) of the State of (name of state) which office is an office of record having a seal, certify that ..... (notary's name), by whom the foregoing or annexed document was notarized, was, at the time of the notarization of the same, a Notary Public authorized by the laws of this State to act in this State and to notarize the within ..... (type of document), and I further certify that the Notary's signature on the document is genuine to the best of my knowledge, information, and belief and that such notarization was executed in accordance with the laws of this State.

In testimony whereof, I have affixed my signature and seal of this office this ..... day of ....., [19]20....

..... (secretary of state's signature, title, jurisdiction, address and the seal affixed near the signature.)

**486.396. If the notary's notary seal has been stolen, the notary shall immediately notify the secretary of state in writing to report the theft. Upon receipt of the written documentation, the secretary of state shall issue the notary a new commission number for the notary to order a new seal. The secretary of state may post notice on the secretary of state's web site notifying the general public that the notary seal of such notary with the stolen commission number is invalid and is not an acceptable notary commission number.**

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